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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

BOBBY GONZALEZ,

Defendant and Appellant.

B207815

(Los Angeles County
Super. Ct. No. BA333677)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Marcelita V. Haynes, Judge. Affirmed.

Kevin D. Sheehy, under appointment by the Court of Appeal, for Defendant and
Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant
Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Keith H.
Borjon and John R. Gorey, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Defendant Bobby Gonzalez appeals from a judgment of conviction entered after a jury found him guilty of sale of a controlled substance (cocaine base) (Health & Saf. Code, § 11352, subd. (a); count 1) and possession for sale of cocaine base (*id.*, § 11351.5; count 2), and the trial court found true the allegation defendant had been previously convicted of a drug-related offense (*id.*, § 11370.2, subd. (a)). The trial court sentenced defendant to state prison for an aggregate term of 14 years: the upper five-year term on count 2, plus nine years for the three drug-related enhancements, and a concurrent term of four years on count 1.

On appeal, defendant contends the trial court erred by failing to stay sentence on count 1 pursuant to Penal Code section 654. We reject this contention and affirm the judgment.

FACTS

On the evening of December 14, 2007, Los Angeles Police Department officer Alonzo Williams was working undercover in an area known for its narcotics activity. Officer Williams was standing near defendant, when an unidentified man asked defendant for a “dime” (street vernacular for \$10 worth of cocaine), and handed defendant some money. Defendant handed over two off-white solid objects which he retrieved from his pants pocket and gave them to the man, who then walked away.

Officer Williams asked defendant for a “dub” (street vernacular for \$20 worth of cocaine), and defendant said, “Okay.” Officer Williams handed over a prerecorded \$20 bill, and defendant pulled from his pants pocket four off-white solid objects and gave them to the officer. Defendant then instructed Officer Williams to accompany him, and they walked a short distance before defendant said, “I’m going to give you one more piece. I don’t want to pull out my sack.” Defendant produced one more off-white solid object from his pants pocket and gave it to Officer Williams. Defendant was

subsequently arrested and found to be carrying in his pants pockets a ziplock baggie containing 129 off-white solid objects, the prerecorded \$20 bill and \$51. The off-white solid objects found on defendant's person and received by Officer Williams tested positive for cocaine base.

DISCUSSION

Defendant argues his conviction on count 1 for sale of cocaine base should have been stayed pursuant to Penal Code section 654 because it involved an indivisible course of conduct with the same criminal objective as count 2 possession for sale of cocaine base.

Penal Code section 654 bars punishment under multiple statutory provisions when a defendant engages in an indivisible course of conduct involving a single criminal objective. (*Neal v. State of California* (1960) 55 Cal.2d 11, 19.) "The divisibility of a course of conduct depends upon the intent and objective of the defendant. If all the offenses are incidental to one objective, the defendant may be punished for any one of them, but not for more than one. On the other hand, if the evidence discloses that a defendant entertained multiple criminal objectives which were independent of and not merely incidental to each other, the trial court may impose punishment for independent violations committed in pursuit of each objective even though the violations shared common acts or were parts of an otherwise indivisible course of conduct." (*People v. Liu* (1996) 46 Cal.App.4th 1119, 1135.) "The question whether the defendant entertained multiple criminal objectives is one of fact for the trial court, and its findings on this question will be upheld on appeal if there is any substantial evidence to support them." (*Id.* at pp. 1135-1136.)

Defendant asserts his conduct of selling rock cocaine first to the unidentified man and then immediately to Officer Williams shows he was pursuing a single indivisible course of conduct as a drug dealer, which was selling his entire supply of rock cocaine to any interested buyers, and was therefore improperly punished for "multiple statutory

violations produced by the ‘same act or omission.’” (*People v. Harrison* (1989) 48 Cal.3d 321, 335.) While it is true when an individual is convicted of both sale and possession of narcotics, “separate punishments for sale and possession may not be imposed where the sale consists of the peddler’s entire inventory. Where, as here, each sale consumes only part of his inventory, he may be punished separately for the possession of his unsold stock in trade.”¹ (*People v. Fusaro* (1971) 18 Cal.App.3d 877, 894; *In re Adams* (1975) 14 Cal.3d 629, 633 [“if a person sells only part of the narcotics he possesses, both the offenses of possession and sale may be punished, since possession of the excess unsold narcotics was not necessary to the sale”]; *People v. Fortier* (1970) 10 Cal.App.3d 760, 765-766; *People v. Goodall* (1982) 131 Cal.App.3d 129, 147.) The trial court therefore was not required to stay defendant’s sentence on one of his two convictions.

¹ *People v. Sheldon* (1967) 254 Cal.App.2d 174 upon which defendant relies does not help him. As noted by our colleagues in Division Four, that case is distinguishable, in which “it was held that Sheldon could not be sentenced for both possession for sale and for furnishing marijuana where the contents of both bag and box were used to fill the order, showing an intent to offer all he had for sale. In the case at bench, there is no indication that the undercover agent was to buy all the narcotics defendant possessed, and the officer bought only a small portion.” (*People v. Fortier, supra*, 10 Cal.App.3d at p. 766.)

DISPOSITION

The judgment is affirmed.

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JACKSON, J.

We concur:

PERLUSS, P. J.

WOODS, J.